Supreme Court U.S.
FILED
JUL 29 2004

No. 04-4

IN THE

# Supreme Court of the United States

CIT LEASING CORPORATION,

*Petitioner*,

*v.*

DENTON CENTRAL APPRAISAL DISTRICT
and DENTON APPRAISAL REVIEW BOARD,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS AT FORT WORTH

## BRIEF IN OPPOSITION

RANDEL B. GIBBS
*Counsel of Record*
ANDREA SHEEHAN
JOSEPH K. BALL
LAW OFFICES OF
ROBERT E. LUNA, P.C.
4411 North Central Expressway
Dallas, Texas 75205
(214) 521-8000

*Counsel for Respondents*

188815

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

## QUESTION PRESENTED

Respondent is dissatisfied with the Question Presented by Petitioner. The true Question Presented is:

> Does notice of a tax assessment, and an opportunity to correct any errors in such assessment, satisfy constitutional due process requirements?

## TABLE OF CONTENTS


| | *Page* |
|---|---|
| Question Presented | i |
| Table of Contents | ii |
| Table of Cited Authorities | iii |
| Table of Appendices | iv |
| Statement of the Case | 1 |
| Reasons for Denying the Petition | 1 |
| I. Due Process Only Requires Notice and an Opportunity To Be Heard Before a Final Deprivation of Property | 2 |
| II. Denton Central Appraisal District's Appraisal of the Property Was Not Rendered Void by Any Claimed Failure To Provide Notice Under Texas Tax Code § 25.19 | 5 |
| Conclusion | 7 |

## TABLE OF CITED AUTHORITIES

*Page*

**Cases:**

*Bass v. Aransas County Independent School District*, 389 S.W. 2d 165 (Tex. Civ. App.-Corpus Christi 1965, pet. denied) ..... 3

*In re Chicago Rys. Co.*, 175 F.2d 282 (7th Cir. 1949), *cert denied*, 380 U.S. 850 (1949) ..... 6

*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) ..... 4, 5

*Texaco, Inc. v. Short*, 454 U.S. 516 (1982) ..... 5

**Statutes:**

TEX. TAX CODE § 25.19 ..... 5, 6

TEX. TAX CODE § 41.41 ..... 2

TEX. TAX CODE § 41.411 ..... 7

## TABLE OF APPENDICES

*Page*

Appendix A — Tex. Tax Code § 6.41 ..... 1a

Appendix B — Texas Tax Code § 41.41 ..... 3a

## STATEMENT OF THE CASE

Respondent agrees with the Statement of the Case in the Petition except in one particular. Petitioner twice describes the tax bill it received as a "final" tax bill. Under the statutory scheme in Texas, Petitioner had an opportunity after receipt of such bill to protest any prior lack of notice; to obtain a hearing on such protest; and, if successful, to thereafter raise and receive a hearing on any other grounds of protest that it may have had concerning the assessment of such taxes. Accordingly, the tax bill only became "final" after Petitioner allowed the time for filing a protest to lapse without taking action.

## REASONS FOR DENYING THE PETITION

Petitioner does not state any compelling reasons for granting its Petition. Although Petitioner urges in its Conclusion that granting the Petition is a "last resort to prevent the implementation of a system that will lead to nationwide abuse of the property taxpayers," in fact the complaints it raises are issues and interpretations of Texas state law by Texas courts. (". . . the decision by the Texas Court of Appeals does away with the due process protections contained in the [Texas] Tax Code and the Constitution.")[1] Petitioner offers no indication that any other states have similar statutory schemes, or that any have interpreted their own laws in any similar fashion. The decision of the Texas Court of Appeals[2] was based entirely on Texas law. Finally, Petitioner presents no valid constitutional claims for consideration.

---

1. Petition for Writ of Certiorari p. 17

2. Appendix to Petition for Writ of Certiorari p. iii

## I.

## Due Process Only Requires Notice and an Opportunity To Be Heard Before a Final Deprivation of Property

Respondents do not disagree with the proposition that, before a taxing authority can finally deprive a property owner of property, the property owner must have notice of such event and an opportunity for hearing. Petitioner indisputably *had* such notice and opportunity.

Under the Texas statutory tax scheme as described in the Texas Court of Appeals' opinion[3], a property owner who wishes to complain about some aspect of his assessment must do so within the time limits set forth by statute. If it fails to do so, it loses the right of protest. If the property owner claims to have been deprived of the notice that would have triggered its duty to protest, it must follow a two-step process. First, the property owner must timely protest and obtain a hearing on the claim of lack of notice. If successful, the property owner may then further raise additional grounds of protest that it may have concerning the taxation of its property.[4] Thus, a tax on the property does not become "final" or unchallengeable until after the property owner has had an opportunity to complain about a lack of notice and about any underlying concerns about the tax.

Although Petitioner says "Under Texas law, assessments that have been approved by the appraisal review board are considered final",[5] that claim is not supported. Petitioner cites

---

3. *Id.*

4. *See*, TEX. TAX CODE § 41.41.

5. Petition p. 14

*Bass v. Aransas County Independent School District*, 389 S.W. 2d 165, 172 (Tex. Civ. App.-Corpus Christi 1965, pet. denied). That case does not so state, nor could it. Appraisal review boards are not referred to in such decision, because they did not exist at that time but rather were created by an act of the 66th Texas Legislature in 1979.[6]

The case instead concerns boards of equalization, which existed under a statutory scheme that was entirely replaced when the Texas Tax Code was later enacted. As the case notes, under the scheme in place at that time, taxpayers had limited rights of relief once a plan of taxation was put into effect. The case contains not a single reference to the Texas Tax Code; or to the finality of tax bills under the Code, because the Code, with its rights of administrative and judicial determination of tax appraisal and assessment protests, did not exist when the case was decided.[7]

Here, Petitioner admittedly received notice that its property had been added to the tax roll; notice of the value at which the property had been appraised; notice of the amount of taxes owed on the property in the absence of any successful protest; and notice of the delinquency date for the taxes.[8]

---

6. *See* Appendix pp. 1a-2a.

7. See the general description of the applicable Tax Code procedures in the Court of Appeals' decision in Appendix to Petition for Writ of Certiorari pp. vii-ix; xi

8. Statement of the Case at Petition p. 9

The core of the Petition is an assertion[9] that the tax bill that Petitioner admittedly received did not afford due process because it did not give Petitioner procedural direction concerning how to go about protesting the assessment. The Petition states that the tax bill "did not apprise CIT of its right to hearing nor of the statutes under which it could protest the tax bill," and that "CIT was not notified as to what remedies were available to it to contest the assessment."[10]

CIT knew that its property had been newly added to the tax rolls; knew the value at which the property was assessed; knew the amount of taxes imposed; and knew by when it had to pay such taxes to avoid delinquency. Thus, it had all the facts at hand to determine whether to take steps to protest such assessment. It had a statutory procedure available to it under state law to make such protest. It failed to take advantage of such procedure.

Petitioner's claim, clearly stated, is that due process requires taxing authorities to provide a taxpayer with individual notice of *how* to protest. However, the Petition cites no relevant authority to support such theory. The Petition notes the language in *Mullane v. Central Hanover Bank & Trust Co.*, that notice must be "reasonably calculated under all circumstances, to appraise the interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). CIT had exactly that. It knew about the tax and had the opportunity to object.

---

9. Petition p. 13

10. *Id.*

*Mullane* does not require that the taxpayer be individually told *how* to object. This court has held the opposite in *Texaco, Inc. v. Short*, 454 U.S. 516, 531 n.25 (1982). The Court said that every citizen is charged with knowledge of relevant statutory provisions affecting the control or disposition of property, and that "All persons are charged with knowledge of statutes and must take note of the procedure adopted by them . . . This is especially the case with respect to those statutes relating to the taxation or condemnation of land." *Id.*, *citing*, *North Laramie Land Co. v. Hoffman*, 268 U.S. 276, 283, 45 S. Ct. 491, 494, 69 L. Ed. 953.

## II.

## Denton Central Appraisal District's Appraisal of the Property Was Not Rendered Void by Any Claimed Failure To Provide Notice Under Texas Tax Code § 25.19

CIT does not claim, nor could it claim, that it had no remedies available to correct any errors in the assessment of its property. Likewise, it does not claim that the remedies were not adequate. The decision of the Texas Court of Appeals correctly found CIT had remedies available to it that it failed to exercise on a timely basis.[11] Instead, CIT rather remarkably takes the position that it was "under no obligation to exhaust its administrative remedies under Tex. Tax Code 41.411 because the Denton Central Appraisal District did not acquire jurisdiction over CIT's property. . . ."[12]

---

11. Appendix to Petition p. iii, at viii-ix.

12. Petition p. 16

CIT asserts that, under Texas law, it was entitled to a specific form of notice[13] that it claims it did not receive.[14] (Whether or not CIT proved in the trial court that it received such notice was a matter in dispute. Because the Court of Appeals found that CIT failed to exhaust its administrative remedies, it did not address this issue. *See* Appendix to Petition at xiii-xiv.)

CIT claims that this alleged failure to receive the 25.19 notice deprived Respondent of jurisdiction to appraise its property. Of course, to the extent that such claim rests on state law, it has been fully and finally decided against CIT.

Here, CIT relies primarily on *In re Chicago Rys. Co.*, 175 F.2d 282 (7th Cir. 1949), *cert. denied*, 380 U.S. 850 (1949). This case actually supports Respondent. In a passage quoted by Petitioner on page 16 of the Petition, the Court notes that its ruling is limited to situations involving a *changed* assessment made without notice or opportunity for hearing, *and which would be conclusive on the taxpayer.* In such cases, the assessment would be invalid. The Court specifically excepts from its ruling a *new* assessment, timely made, and says that in such case the taxpayer would have had to apply to the appropriate body for relief.

In CIT's situation, CIT's property was newly added to the tax rolls in the year in question. It has never claimed the tax bill that it received to be untimely. The tax bill was neither final nor conclusive, because upon receiving it, CIT had

---

13. The notice provided by Texas Tax Code § 25.19. *See* appendix to Petition p. xxiii.

14. Statement of the Case, Petition p. 9

the opportunity under Tex. Tax. Code § 41.411 to obtain a hearing and raise its objections. *See* TEX. TAX CODE § 41.411. CIT failed or refused to exercise its rights, and such failure or refusal did not deprive Denton Central Appraisal District of jurisdiction over the appraisal of CIT's property.

## CONCLUSION

For the reasons set forth above, Respondents respectfully request that the Petition for Writ of Certiorari filed by Petitioners be denied.

Respectfully submitted,

RANDEL B. GIBBS
*Counsel of Record*
ANDREA SHEEHAN
JOSEPH K. BALL
LAW OFFICES OF
ROBERT E. LUNA, P.C.
4411 North Central Expressway
Dallas, Texas 75205
(214) 521-8000

*Counsel for Respondents*

# APPENDIX

## Appendix A — Tex. Tax Code § 6.41

Tax Code
Title 1. Property Tax Code
Subtitle B. Property Tax Administration
Chapter 6. Local Administration
Subchapter C. Appraisal Review Board

### § 6.41. Appraisal Review Board

(a) The appraisal review board is established for each appraisal district.

(b) The board consists of three members. However, the district board of directors by resolution of a majority of its members may increase the size of the appraisal review board to the number of members the board of directors considers appropriate.

(c) To be eligible to serve on the board, an individual must be a resident of the district and must have resided in the district for at least two years.

(d) Members of the board are appointed by resolution of a majority of the appraisal district board of directors. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(e) Members of the board hold office for terms of two years beginning January 1. The appraisal district board of directors by resolution shall provide for staggered terms, so that the terms of as close to one-half of the members as possible expire each year. In making the initial or subsequent appointments, the

board of directors shall designate those members who serve terms of one year as needed to comply with this subsection.

(f) A member of the board may be removed from the board by a majority vote of the appraisal district board of directors. Grounds for removal are:

(1) a violation of Section 6.412, 6.413, 41.66(f), or 41.69; or

(2) good cause relating to the attendance of members at called meetings of the board as established by written policy adopted by a majority of the appraisal district board of directors.

CREDIT(S)

Acts 1979, 66th Leg., p. 2231, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 127, ch. 13, § 29, eff. Jan. 1, 1982; Acts 1989, 71st Leg., ch. 796, § 11, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 597, § 107, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 2nd C.S., ch. 6, § 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 154, § 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 299, § 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1039, § 4, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 639, § 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 354, § 1, eff. Jan. 1, 2002; Acts 2001, 77th Leg., ch. 1430, § 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 408, § 1, eff. Jan. 1, 2004.

## Appendix B — Texas Tax Code § 41.41

Tax Code
Title 1. Property Tax Code
Subtitle F. Remedies
Chapter 41. Local Review
Subchapter C. Taxpayer Protest

### § 41.41. Right of Protest

(a) A property owner is entitled to protest before the appraisal review board the following actions:

(1) determination of the appraised value of the owner's property or, in the case of land appraised as provided by Subchapter C, D, E, or H, Chapter 23, determination of its appraised or market value;

(2) unequal appraisal of the owner's property;

(3) inclusion of the owner's property on the appraisal records;

(4) denial to the property owner in whole or in part of a partial exemption;

(5) determination that the owner's land does not qualify for appraisal as provided by Subchapter C, D, E, or H, Chapter 23;

(6) identification of the taxing units in which the owner's property is taxable in the case of the appraisal district's appraisal roll;

(7) determination that the property owner is the owner of property;

(8) a determination that a change in use of land appraised under Subchapter C, D, E, or H, Chapter 23, has occurred; or

(9) any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner.

(b) Each year the chief appraiser for each appraisal district shall publicize in a manner reasonably designed to notify all residents of the district:

(1) the provisions of this section; and

(2) the method by which a property owner may protest an action before the appraisal review board.

CREDIT(S)

Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 170, ch. 13, § 137, eff. Jan. 1, 1982; Acts 1985, 69th Leg., ch. 823, § 3, eff. Jan. 1, 1986; Acts 1989, 71st Leg., ch. 796, § 34, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 113, § 1, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 631, § 11, eff. Sept. 1, 1999.